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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 151.

THE AMERICAN RAILROAD COMPANY OF PORTO RICO, PLAINTIFF IN ERROR,

vs.

JULIO P. CASTRO.

MOTION TO DISMISS AND BRIEF IN SUPPORT OF MOTION TO DISMISS.

FREDERICK L. CORNWELL,
Attorney for Defendant in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 2398

(19,991.)

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No. 151.

THE AMERICAN RAILROAD COMPANY OF PORTO RICO, PLAINTIFF IN ERROR,

vs.

JULIO P. CASTRO.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

MOTION TO DISMISS.

Now comes the defendant in error, by his attorney, Frederick L. Cornwell, and moves the court to vacate the writ of error heretofore granted herein and to dismiss said cause for want of jurisdiction thereof in this court for the following reasons, to wit:

First. Because the judgment rendered in the court below against the plaintiff in error herein was less than the sum of five thousand dollars, to wit, the sum of one thousand six hundred dollars, as appears from the transcript of the record of said cause now on file in this court.

Second. Because the said plaintiff in error has not by his assignments of error brought before this court for review any claim or right under the Constitution or laws of the United States or any treaty thereof.

Third. Because the final judgment in said cause, if obtained in the Supreme Court of a Territory of the United States, could not be reviewed by writ of error from this court.

Wherefore the defendant in error moves the dismissal of said cause.

FREDERICK L. CORNWELL,
Attorney for Defendant in Error.

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1906.

No. 151.

THE AMERICAN RAILROAD COMPANY OF PORTO RICO,
Plaintiff in Error,
vs.
JULIO P. CASTRO.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

NOTICE OF MOTION TO DISMISS.

SIR: Please take notice that the defendant in error in the above-entitled cause will, on the 14th day of January, 1907, between the hours of 12 noon and 1 o'clock p. m. or as soon thereafter as counsel can be heard, in the Supreme Court room, in the city of Washington, D. C., in open court, move this court to vacate the writ of error heretofore granted herein and to dismiss said cause for want of jurisdiction thereof in this court for the following reasons, to wit:

First. Because the judgment rendered in the court below against the plaintiff in error herein was less than the sum of five thousand dollars, to wit, the sum of one thousand six hundred dollars, as appears from the transcript of the record of said cause now on file in this court.

Second. Because the said plaintiff in error has not by his assignments of error brought before this court for review any claim or right under the Constitution or laws of the United States or any treaty thereof.

Third. Because the final judgment in said cause, if obtained in the Supreme Court of a Territory of the United States, could not be reviewed by writ of error from this court.

Together with this motion the defendant in error serves upon said plaintiff in error a copy of his brief to be filed in the Supreme Court in support of said motion.

Dated Mayaguez, 8th day of November, 1906.

Very respectfully,

FREDERICK L. CORNWELL,
Attorney for Defendant in Error.

To FRANK H. DEXTER, Esq.,
Attorney for Plaintiff in Error.

Service accepted of copy of the aforesaid motion to vacate and dismiss and of brief in support thereof this 9th day of November, 1906.

FRANCIS H. DEXTER,
Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1906.

No. 151.

THE AMERICAN RAILROAD COMPANY OF PORTO RICO,
Plaintiff in Error,
vs.
JULIO P. CASTRO.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF ON MOTION TO DISMISS.

This suit was originally brought by Julio P. Castro, as plaintiff, for the recovery of damages for loss of life of the minor daughter of the said plaintiff on account of the fault and negligence of the defendant (Record, page 1). The cause proceeded to trial by jury, and the jury returned a verdict in favor of plaintiff in the sum of $1,600.

The errors assigned, as appears from the transcript of record, page 25, are the following:

1.

That the court erred in overruling the plea to the jurisdiction herein, for the reason that this action was instituted and tried at a special term (there being no regular term authorized by law to be held) in the city of Mayaguez and therefore, by virtue of the provisions of section 670 of the Revised Statutes of the United States, the district court of the United States for Porto Rico, had no jurisdiction to try this cause before a jury at such special term of the said court begun and held at the city of Mayaguez aforesaid.

2.

That the court erred in overruling defendant's demurrer to the complaint.

3.

That the court erred in overruling the objection of counsel for defendant to the following question: "Is there or is there not a gate there?" asked of the witness José Remote Fajardo

Also in overruling the objection of counsel for defendant to the following question: "Do you know of any other accident at this crossing, Mr. Fajardo?" asked of the witness Don Mateo Fajardo.

Also in overruling the objection of counsel for the defendant to the following question: "At that crossing state whether or not there ever was a gate and watchman?" asked of the witness Celso Leon.

Also in overruling the objection of counsel for the defendant to the following question: "State whether or not there was a watchman there?" asked of the witness Isaac Gonzalez.

4.

That the court erred in giving the following instructions during the course of the charge to the jury:

"It is contended on the part of the plaintiff that had this plain legal duty, devolving upon this company defendant, been performed — complied with on the occasion of this accident, that the accident could not have occurred. That is, if the gate had been across the crossing and the watchman there attending to his duties, it being at broad daylight, the accident would have been prevented, and that the failure to maintain a watchman and a gate at the crossing there was the cause, the efficient cause of this accident, and was such negligence in itself that made this company liable to the plaintiff for damages. The same law required other duties on the part of the company. It required duties that are known in other States as common-law duties, but they are incorporated in the laws of Porto Rico as part of the statute; that the whistle should be blown and the bell rung and the train slow up as it approached crossings of this character.

"Now, we start, gentlemen of the jury, with the confessed or proven failure of this company to maintain a gate or a watchman, as required by law, which is negligence in itself.

"Now, if from the evidence you find that the driver was not guilty of negligence to such an extent as to justify you in finding that it was gross, willful and wanton, but by the exercise of ordinary common sense, ordinary precaution, he had

time when he got within a certain distance of the railroad track to see it, five feet or ten off, whatever the testimony was, and he could have checked his horses, and he neglected to look up the track or to take any precautions, if you find that, that would be a minor degree of negligence. It would be a mistake on his part, and in that event you would be entitled to take that fact into consideration, of his negligence in not looking up and down the track or stopping when he got close enough to the track to see it. You would be justified and it would be your duty, if you believe the testimony on that subject, to take the testimony on that subject into consideration in cutting down or mitigating any damages you may be disposed to allow in the case.

"If the action of the driver, from the evidence was rash, wanton, willful and reckless in trying to cross the railroad track without looking, in the thought that he could cross before the train reached the crossing, and he made a mistake in his calculation and the train struck the hind part of that carriage and caused this unfortunate accident and the loss of life, then that is such reckless and wanton conduct as would defeat the action entirely, and your verdict would be for the defendant if you find that fact. On the other hand, if you find a lesser degree of negligence, amounting to what is called want of ordinary care that a prudent man would exercise in crossing that place, then you have a right to take that into consideration, not to defeat the entire action, but to affect the extent of damages and make the damages, if you find any were suffered, correspondingly less."

5.

That the court erred in reading from a law book upon the measure of damages, during the course of said charge, to the effect that damages are limited to the loss of comfort and society of the deceased.

6.

That the court erred in giving the following instructions requested by the plaintiff, together with modifications:

First. If you find a verdict in favor of the plaintiff, in determining the amount of the damages, you are instructed as follows: The laws of Porto Rico provide that a father may maintain an action for the death of his minor child, when

such death is caused by the wrongful act or neglect of another, that such damages may be given as, under all the circumstances of the case, be just. And in determining this question you are to take into consideration all the circumstances of the case, the age of the deceased, the kind of a girl she was, and take into consideration the assistance that she might have been to the parents in future years, and you may also consider the loss of society and comfort and the reliance that they could place upon her in future years. And you may take into consideration all these things in determining what the plaintiffs should receive as compensation for the loss they have received.

Answer. Gentlemen, that is the law properly stated and I affirm that point.

Second. The laws of Porto Rico require that where railroads cross other roads on the same level, gates shall be constructed which shall only be opened when vehicles and cattle cross the track, and if the jury believe from all the evidence in the case that the point where the accident happened was at the crossing of the public highway, extending between San German and Mayaguez, and the defendant's railroad tracks, and that at this crossing there were no gates as required by law, and that if the gates had been there and had been closed as the coach containing the deceased approached the said crossing, the accident would not have happened, then the jury will return a verdict for the plaintiff.

Answer. That point is affirmed. If the gate was up and closed and all, it is your duty to determine whether, as a matter of fact, from the evidence, the accident would have happened at all.

Third. The burden of proof of contributory negligence is on the defendant and must be proved by a preponderance of evidence.

Answer. That point is affirmed. The defense set up here is that the plaintiffs themselves were guilty of contributory negligence and not entitled to recover. Having undertaken to prove that, the burden is upon the plaintiff to prove it by a preponderance of the evidence. That does not mean the greater number of witnesses. You have a right to observe the character of the witnesses, their greater or less degrees of intelligence, their interest, their motives and greater opportunities for observing. You pass upon those questions in determining the question of preponderance of evidence.

7.

That the court erred in refusing to give to the jury the following instructions requested by defendant and in modifying same:

(5.) The court instructs the jury that at this railroad crossing the train of defendant company had the right of way and the agents and employés of defendant in charge thereof were held to the exercise of only ordinary care and diligence to avoid accidents at such crossings. And if you believe from the evidence that the fireman and engineer on the train which caused the accident gave the warning whistles and rang the bell as testified to by them, and upon the engineer seeing the coach at about fifty meters distant from the crossing both he and the fireman did all that they could reasonably do to stop the train and avoid the collision, then you will find for the defendant.

Which instructions the court modified as follows:

Answer. This instruction is affirmed with the qualification however, that the full performance of all duties imposed by law and the exercise of ordinary care to prevent the accident by stopping the train before the collision and accident, did not relieve defendant company from the further duty imposed by law to maintain a gate and watchman at said crossing as precautions to prevent accidents at crossing. Nor did absence of gate and watchman at crossing by defendant, facts, if well known for several years to the coachman and at time of accident, if you so find from the testimony, did not relieve plaintiff from the exercise of ordinary care, and if the coachman of plaintiff attempted to cross tracks, knowing and seeing no gate there, he was guilty of such contributory negligence, which, if jury finds to be only the want of ordinary care and negligence, should operate to reduce and mitigate amount of damages to plaintiff, if any are to be found by the jury. If the jury, however, should find that the driver of plaintiff, on approaching the tracks at the crossing and well knowing and observing no gate to be maintained at said crossing undertook without stopping or looking for trains on the track, and that the said driver of plaintiff whipped his horses and undertook to so cross the tracks under said circumstances in evidence, such action of driver would be such reckless, rash and gross negligence as to entirely defeat the right of plaintiff to recover in this action.

Rash, wanton or gross negligence in law operates to defeat a plaintiff's right to recover, but it is the duty of the jury and not of the court to find the fact and circumstances in evidence alleged to constitute either ordinary or gross, wanton negligence of plaintiff's driver.

(6.) If you believe from the evidence that coachman Rodriguez stopped at any place before reaching the crossing at a point where he could not see nor hear the approaching train and then started to cross the track without again stopping, looking or listening at any point up to the track itself, where, under the evidence, you may believe that he could have seen or heard the approaching train, this conduct on the part of the coachman was reckless and wanton and made him guilty of contributory negligence, notwithstanding you believe from the evidence that no chain, gate or watchman were at said crossing.

Which instruction the court modified as follows:

Answer. Affirmed with same qualifications as specified in the foregoing point regarding failure of duty of defendant under the law to maintain a gate and watchman at the crossing, and the correlative obligation of plaintiff's driver with knowledge of years and seeing at time the removal of gate to exercise a degree of ordinary care and prudence at so dangerous a crossing as the evidence tends to prove the one in dispute is.

(9.) The court instructs the jury that defendant company was not obliged to maintain a chain, gate or watchman at the crossing, where the accident occurred and that it and its servants and employés in the operation of the trains were only held to the exercise of ordinary diligence in avoiding accident at that place.

Which instruction the court modified as follows:

Under existing laws of Porto Rico continued under the express provisions of the Foraker law and amendments, under which Congress of the United States created government of Porto Rico, the police regulations governing operation of railroads, requiring maintenance of gates at crossing of railroad for safety of human life is compatible with the laws of the United States and of Porto Rico, never having been repealed. This point as stated is refused.

(10.) As to ordinary diligence and reasonably safe appliances the court is asked to instruct the jury that they will take into consideration the character of the railway, the

purposes for which it was used, the general nature of the country and the demands of the people, and you are instructed that under all those circumstances defendant company was only required to use ordinary safe appliances and locomotives and cars and was not required to have as high a degree of perfection as may exist in the best railways of the world.

Which instruction the court modified as follows:

Answer. All this instruction is affirmed as law, but with the qualification that all this care, caution and exercise of high order of care by defendant must be considered with reference to the duty imposed by law to maintain a gate at the grade crossing in question and a failure of duty of defendant to maintain said gate.

(11.) The jury are instructed that if you should decide to award damages to plaintiff, you can only allow such damages as have been proven in the case. And if you believe from the evidence that plaintiff, because of his position, has not been deprived of any financial support or assistance by reason of the death of his said daughter, then you cannot award any damages to plaintiff therefor.

You are further instructed that in awarding damages you are not at liberty to allow damages on the ground of sympathy, sentiment of speculation, but such damages must be the result of positive proof and of financial or pecuniary loss clearly established by preponderance of the evidence.

Which instruction the court modified as follows:

Answer. The words of the law require, if you find for plaintiff under the evidence, that you allow such damages as you may, under the evidence and circumstances, consider as just, and with this qualification, this instruction is affirmed.

8.

That the court erred in entering judgment in favor of the plaintiff and against defendant for the sum of sixteen hundred dollars ($1600.00).

ARGUMENT.

The only assignment of error which in any way attempts to raise a Federal question is number 1.

"That the court erred in overruling the plea to the jurisdiction herein, for the reason that this action was instituted and tried at a special term (there being no regular term authorized by law to be held) in the city of Mayaguez, and therefore, by virtue of the provisions of section 670 of the Revised Statutes of the United States, the district court of the United States for Porto Rico had no jurisdiction to try this cause before a jury at such special term of the said court begun and held at the city of Mayaguez aforesaid."

And we contend that section 670 of the Revised Statutes of the United States is without application to the United States district court for Porto Rico, and that therefore no Federal question is involved. The United States district court for Porto Rico is neither a circuit nor a district court of the United States within the meaning of the Constitution and the United States statutes.

Only those courts are constitutional courts which are organized by Congress within the States; those organized in any of the territory belonging to the United States and not included within a State are called legislative or congressional courts. They may have all the jurisdiction of "district and circuit courts of the United States," but are not such.

"It has been contended, that by the Constitution the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction, and that the whole of this judicial power must be vested 'in one Supreme Court and in such inferior courts as Congress shall from time to time ordain and establish.' Hence it has been argued, that Congress cannot vest admiralty jurisdiction in courts created by the territorial legislature.

"We have only to pursue this subject one step further, to perceive that this provision of the Constitution does not apply to it. The next sentence declares that 'the judges both of the

supreme and inferior courts, shall hold their offices during good behavior.' The judges of the superior courts of Florida hold their offices for four years. These courts, then, are not constitutional courts, in which the judicial power conferred by the Constitution on the General Government can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are vested is not a part of that judicial power which is defined in the 3rd article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States. Although admiralty jurisdiction can be exercised *in the States* in those courts only which are established in pursuance of the 3rd article of the Constitution, the same limitation does not extend to the Territories. In legislating for them, Congress exercises the combined powers of the general and of a State government."

American, etc., Ins. Co. *vs.* 356 Bales of Cotton (Canter, claimant), 1 Pet., 511.

To the same effect see the following:

Clinton *vs.* Englebrecht, 13 Wall., 434.
Reynolds *vs.* United States, 98 U. S., 145.
McAllister *vs.* United States, 141 U. S., 174.
The Coquitlam, 163 U. S., 346.
United States *vs.* McMillan, 165 U. S., 501.

The district courts of the United States organized in the States under article 3 of the Constitution are distinct from the circuit courts of the United States organized in like manner, but under the organic acts of the Territories the court is one only, though exercising the combined jurisdiction of the circuit and district courts of the United States.

"By the organic act of the Territory of Utah, as of other Territories of the United States, the legislative power of the Territory extended only 'to all rightful subjects of legisla-

tion, not inconsistent with the Constitution and laws of the United States,' all statutes of the territory, if disapproved by Congress, were 'to be null and of no effect,' and the Constitution and all laws of the United States, not locally inapplicable, were extended over and declared to be in force in the Territory (U. S. Rev. Stats., secs. 1850, 1851, 1891).

"In each Territory, the supreme court and the district courts were established, the general nature of their jurisdiction defined, and the mode of appointment of their clerks prescribed by Congress, as appears in U. S. Rev. Stat., tit. 23. By sec. 1865 of those statutes the district courts were to be held by one of the justices of the Supreme Court of the Territory, appointed by the President under the Constitution and laws of the United States. The district courts of the Territory were vested, by sec. 1868, with general 'chancery as well as common-law jurisdiction' and by sec. 1910, with 'the same jurisdiction in all cases under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States' with a right of appeal to the Supreme Court of the Territory; and by sec. 1871 it was provided that there should be but one clerk of each district court in the Territory, appointed and designated by the presiding judge, as well as that 'only such district clerks' should be entitled to a compensation from the United States.

* * * * * * *

"Congress then, in the exercise of its sovereign and supreme power of legislation over the Territories of the United States, had extended, in the clearest and fullest manner, to the clerks of the district courts of the Territories, all the provisions of the statutes of the United States, establishing a fee bill, and restricting both the sums of the fees and emoluments to be received and the maximum amount thereof to be retained by the clerks of the United States held within a State. * * *

"Among the provisions of the act of 1853, and of U. S. Rev. St., tit. 13, chap. 16, expressly extended by Congress to the Territories, is the provision that the maximum personal compensation of a clerk of a district court or of a circuit court of the United States shall be no greater if he holds both clerkships than if he holds only one. This clearly indicates the intention of Congress that the maximum compensation of a clerk of a territorial district court should not be

increased even if his fees and emoluments were derived from two distinct sources of authority.

"But the fees and emoluments of the appellee were *not* derived from two offices or from two sources of authority, but from a single office and a single appointment. Each district court of the Territory, vested by Congress with the *jurisdiction which the circuit and district courts of the United States have* over cases arising under the Constitution and laws of the United States, and also with general jurisdiction at law and in equity, was, in the execution of either branch of its authority, *whether exercising Federal or general jurisdiction, one and the same court*, deriving its existence and its judicial powers from Congress; and its clerk, whether dealing with Federal or territorial business, was one and the same clerk, holding a single appointment under an act of Congress and from a judge commissioned by the President of the United States."

To the same effect see the following:

City of Panama, 101 U. S., 453,

in which it is said:

"Such jurisdiction of the territorial district courts within the respective districts is made coextensive with both the Federal circuit and district courts, for reasons which will be obvious to any one who will compare the two sections, one with the other, in their practical operation. *Two* classes of courts are created in the *Federal system* for the exercise of the necessary original jurisdiction, but *in the Territory*, as provided in the organic act, there is but *one class* of courts created for that purpose. Had Congress limited the jurisdiction of the territorial district courts to that exercised by the Federal district courts, then those courts could not have taken cognizance of controversies in patent cases nor of crimes and offenses against the authority of the United States, where the punishment is death, and if their jurisdiction had been limited to that exercised by the circuit courts, then those courts would have had no cognizance whatever of admiralty and maritime causes, or of seizures on water where the proceeding is according to the course of the admiralty law. * * * Two examples of courts having such jurisdiction are found in the 10th section of the judiciary act,

where the Federal district courts in two districts were empowered to exercise jurisdiction in addition to what was conferred by the 9th section of the judiciary act of all other causes, except appeals and writs of error, made cognizable in a circuit court, and with authority to proceed therein in the same manner as a circuit court."

Laws held to be "not locally inapplicable" under that wording in a statute are those of a general nature and not those special laws which apply in terms to "the courts of the United States," which latter are only applicable when the statute specifically so directs.

"The district and circuit courts mentioned in the act of 1891, (creating the circuit courts of appeals) and whose final judgments may be reviewed by the circuit courts of appeals, manifestly belong to the class of courts for which provision is made in the third article of the Constitution, namely: Constitutional courts, in which the judicial power conferred by the Constitution on the General Government can be deposited, and the judges of which are entitled by the Constitution, to receive at stated times a compensation for their services that cannot be diminished during their continuance in office, are removable from office only by impeachment, and hold, beyond the power of Congress to provide otherwise, during good behavior. * * * It necessarily results that the circuit court of appeals for the ninth circuit cannot review the final judgments or decrees of the Alaska court in virtue of its appellate jurisdiction over the district and circuit courts mentioned in the Act of March 3, 1891."

"By section 1910 of the Revised Statutes the district courts of the Territory have the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States; but this does not make them circuit and district courts of the United States. They are courts of the Territories, invested for some purposes with the powers of the courts of the United States. * * *

"Sec. 808 (U. S. Rev. Stats.) was not designed to regulate the impaneling of grand juries in all courts where offenders

against the laws of the United States could be tried, *but only in the circuit* and district courts. This leaves the territorial courts free to act in obedience to the requirements of the territorial laws in force for the time being."

Reynolds *vs.* United States, 98 U. S., 145.

And this would be the result with our court were it not for the express provision of the Foraker bill (sec. 34) that it shall proceed in the cases of which it has cognizance "in the same manner as a circuit court." But there is not a syllable in that or any other law which makes applicable any special statute except those governing *proceedings in cases.*

"A clause in the 13th section of the act, however, has been referred to, by which it is declared 'that the Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Montana as elsewhere in the United States:' and it is argued that by virtue of this enactment, all regulations respecting judicial proceedings which are contained in any of the acts of Congress are imported into the practice of the territorial courts. But this proposition is not tenable. Laws regulating the proceedings of the United States courts are of specific application, and are, in truth and in fact, locally inapplicable to the courts of a Territory. There is a law authorizing this court to appoint a reporter. In one sense this law is not locally inapplicable to the Supreme Court of the Territory; but in a just sense it is so. The law has no specific application to this court, and cannot be applied to the territorial court without an evident misconstruction of the true meaning and intent of Congress in the clause of the 13th section above referred to. That clause has the effect, undoubtedly, of importing into the Territory the laws passed by Congress to prevent and punish offenses against the revenue, the mail service, and other laws of a general character and universal application; but not those of specific application.

"The acts of Congress respecting proceedings in the United States courts *are concerned with, and confined to,* those courts considered as parts of the Federal system, and as invested with the judicial power of the United States *expressly conferred by the Constitution,* and to be exercised in correla-

tion with the presence and jurisdiction of the several State courts and governments. They were not intended as exertions of that plenary municipal authority which Congress has over the District of Columbia and the Territories of the United States. They do not contain a word to indicate any such intent. The fact that they require the circuit and district courts to follow the practice of the respective State courts in cases at law, and that they supply no other rule in such cases, shows that they cannot apply to the territorial courts. As before said, these acts have specific application to the courts of the United States, which are courts of a peculiar character and jurisdiction."

Hornbuckle *vs.* Toombs, 18 Wall., 648.

Nothing could be plainer than the foregoing in holding that the statutes regulating *pleadings and proceedings* in "the courts of the United States" are restricted in their application to the constitutional courts. The same conclusion must necessarily follow as to those statutes regulating the *terms* of such district or circuit courts, the business to be transacted at those terms, and all other matters covered by statutes of *specific application,* to quote the language of the Supreme Court.

The difference between the two, so far as our court is concerned, consists in the fact that pleadings and proceedings have been provided for by the express and specific adoption of the same as in the circuit courts of the United States, while no other regulations governing the constitutional courts—and least of all the distinction between district and circuit court terms—have been either specifically or impliedly adopted. Hence they can have no application.

The argument that the question of whether a jury can be summoned and jury trials had at a particular term is included within the provision that this court, in cases cognizant in the circuit courts of the United States, "shall proceed *therein* in the same manner as a circuit court," is too specious and frivolous to require reply. The word "special" as applied to the terms at Mayaguez was evidently used as distin-

guished from "regular" applied to the terms at San Juan and Ponce, in that the *time* of the convening of terms in the latter cities was *regularly* fixed by the law, while the time of such terms at Mayaguez remained to be specially fixed whenever the judge might deem them expedient.

Respectfully submitted,

FREDERICK L. CORNWELL,
Attorney for Defendant in Error.